

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: October 3, 2002

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02-0092 for Coastal Development Permit

PROPOSAL: Installation of an underground vault and emergency electrical generator to supply backup electrical power to the sanitary sewage lift stations in the north point area of Emerald Bay. The proposal also includes new screen walls and landscaping, above ground electrical equipment, and new underground electrical cables from the underground vault to the affected sanitary sewer lift stations.

LOCATION: The project is located in the community of Emerald Bay, on the ocean side of Pacific Coast Highway at Gate #7. Fifth Supervisorial District.

APPLICANT: Emerald Bay Service District, project developer
Emerald Bay Community Association, property owner

STAFF William V. Melton, Project Manager

CONTACT: Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA02-0092 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The Emerald Bay Service District (District) is the legal entity that provides public works facilities (i.e. water, sewer and roads) for the entire community of Emerald Bay. The District's engineers determined that a second emergency backup power was necessary in order to service three (3) sewer lift stations located on the north point of Emerald Bay. The District engineers concluded that in the event of a commercial power failure, which typically occurs no more than 3 to 5 times per year for an average duration of 1 to 1-1/2 hours, the three (3) sewer lift stations on the north point could overflow and convey raw sewage into the Emerald Bay storm drains and potentially the ocean if a back-up source of electric power is not available. Therefore, providing emergency backup electrical power was mandatory in order for the District to attempt to comply with the recently enacted more restrictive governmental statutes and regulations relating to the avoidance of sewage spills.

Since a back-up generator is required to service the three (3) sewer lift stations located in Emerald Bay's north point area, the site of the generator must be in reasonably close proximity to the subject north point

lift stations. The District determined that the north gate #7 entrance constitutes the only large District real estate parcel located in reasonable proximity to the north point lift stations. The District could not have placed the required vault under the private community street on the north point because the vault size would require relocation of sewer lines, electrical conduits, gas pipes, cable TV lines, water lines, etc. and would cause unreasonable traffic ingress and egress during the construction process. Therefore, no realistic alternative was available to the District for the site location.

In order to provide the necessary backup power, the project includes the installation of a 20x12x10 foot underground containment vault with a small diesel engine electric back-up generator and a 175-gallon diesel fuel storage tank, above ground electrical equipment, new screen walls and landscaping, and installation of underground electrical cables running from the backup generator to the three pump stations.

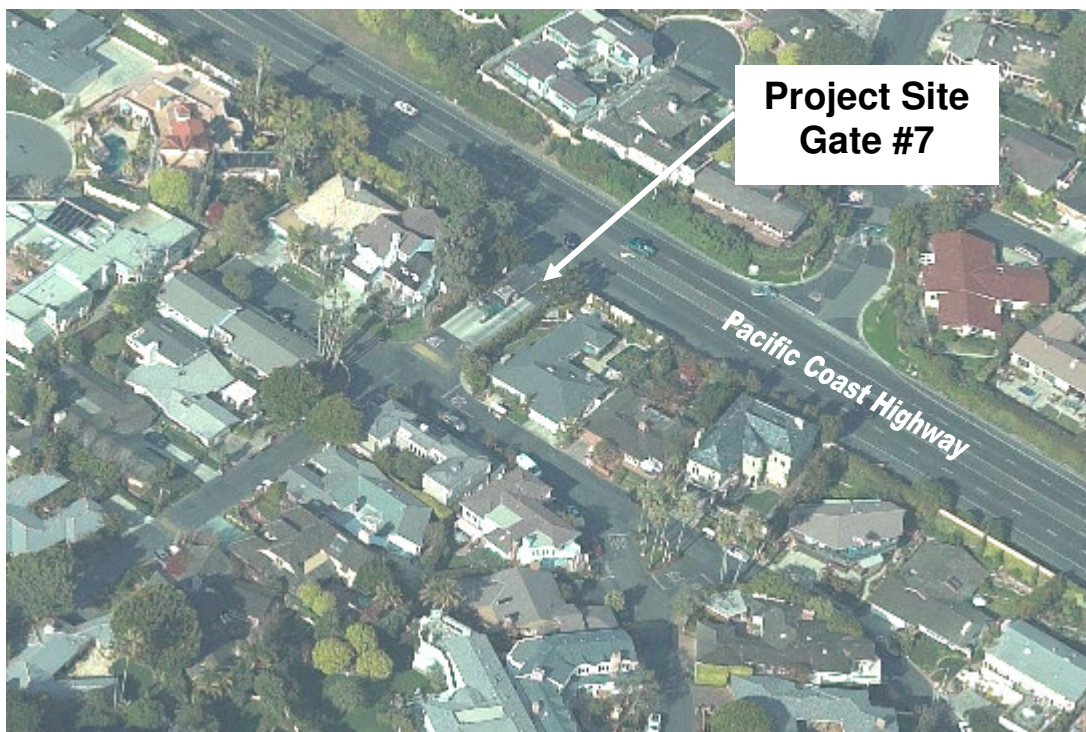
The proposal as submitted is nearly completed. The vault, generator, fuel tank and screen walls, have been installed. See photos in Exhibit 2 and photos attached to Sheet E6 in Exhibit 3. The installation of the at grade electrical boxes, electrical cables to the pump stations and final landscaping are remaining to be completed pending the final determination of this Coastal Development Permit. Prior to the submittal of this Planning Application, the District contacted the County Subdivision and Grading Services Division regarding the need for a grading permit for the installation of the containment vault. The District was informed that a grading permit would not be required. According to the District, they were informed that only an electrical permit would be required. The District did not make contacts with Current Planning and was unaware that a Coastal Development Permit is required.

During the project construction, Mr. Byron Ward, the adjoining property owner, contacted planning staff in July 2002 to inquire about the proposed grading and installation of a large concrete vault occurring at gate #7. His concerns are discussed later in this report. After several conversation with Mr. Ward, staff reviewed Zoning Code Section 7-9-118 CD "Coastal Development" District Regulations to ascertain whether a Coastal Development Permit was required for the emergency backup proposal or if it could be determined that the proposal was exempt from having to obtain a Coastal Development Permit. Staff determined that the project was not listed under any exemptions and that approval of a Coastal Development Permit was required. Additionally, the proposal is located between the ocean and the first public road and is defined as an "appealable development" which may be appealed directly to the California Coastal Commission.

Staff contacted the construction supervisor for Emerald Bay to inform him that approval of a Coastal Development Permit was required for this proposal. During this time, a *Stop Work Notice* was posted at the site on July 18, 2002. Legal counsel for the Emerald Bay Community Association submitted a letter to staff dated July 21, 2002 in response to the *Stop Work Notice* indicating that it was their opinion that under state laws, the District was not required to secure separate permits from the County. This letter was forwarded to County Counsel, who in a letter to Emerald Bay counsel dated August 1, 2002, explained that while the District may be except from certain County permits, the District was probably subject to permitting requirements of the local coastal plan for the area under the Coastal Act, Public Resources Code sections 30000 *et seq.* The Planning Application for this Coastal Development Permit was submitted on August 7, 2002.

SURROUNDING LAND USE:

The project site and all surrounding properties are zoned R1 (CD). The subject site owned by the Emerald Bay Community Association and is a landscape area within a private road right-of-way leading into Emerald Bay from Pacific Coast Highway. The Emerald Bay Community Association refers to the site as Gate No. 7. Surrounding properties are developed with single-family dwellings. See air photo below. The site is also subject The Sign Restriction (SR) overlay districts. Emerald Bay also has a certified Local Coastal Program. All properties ocean side of Pacific Coast Highway, as is this site, are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. Properties located inland of Pacific Coast Highway are not subject to the CD regulation.

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site; and because this site is within the coastal zone, a notice was sent to occupants of dwelling within 100 feet of the site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to six County Divisions, Caltrans and the California Permit Assistance Center. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions.

Staff did receive comments via telephone from a Mr. Byron Ward, the property owner of 127 Emerald Bay, which is located adjacent to the subject site and sharing a common property line. He had concerns regarding the location of the proposed diesel generator, air quality, removal of a tree, the amount of grading taking place and the refueling of the fuel tank. The District and Mr. Ward have met to discuss his

concerns, and according to the District, Mr. Ward's concerns have been resolved, although this has not been confirmed by staff.

Staff notes that in addition to the County's project hearing notification, the District also provided written information to all residents that could be affected by this project. Specifically on April 18, 2002, all residents in close proximity to the project were mailed a notification letter. On April 26, 2002 the May issue of the Emerald Bay community newsletter, "The Tide", was also mailed to all residents specifically describing the project and the proposed construction time schedule. On May 21, 2002, all residents on the ocean-side of Pacific Coast Highway were further mailed the supplemental project notification (samples of these notifications are included in Exhibit 1). In additions to these notifications, the District board held duly noticed meetings at their Emerald Bay office on May 15 and June 25, 2002.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt (Class 1, repair or minor alteration of existing structures or facilities and Class 3, construction of limited numbers of new small structures or facilities) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

In the event of a commercial power failure, which typically occurs no more than 3 to 5 times per year for an average duration of 1 to 1-1/2 hours, the three (3) sewer lift stations on the north point could overflow and convey raw sewage into the District storm drains and potentially the ocean if a back-up source of electric power is not available. According to the District, the proposed project is mandatory in order for the District to attempt to comply with the recently enacted more restrictive governmental statutes and regulations relating to the avoidance of sewage spills.

Regarding the location of the project, the District determined that the project could not be placed under the community street on the north point because the vault size would require relocation of sewer lines, electrical conduits, gas pipes, cable TV lines, water lines, etc. and would cause unreasonable traffic ingress and egress during the construction process. The District determined that proposed location of the project at Gate 7 constituted the only large District real estate parcel located in reasonable proximity to the north point lift stations. The proposed location created the least amount of traffic congestion during the construction phase. Ongoing maintenance of the completed project should have little if any affect on the community traffic using Gate 7.

Staff is aware of only one property owner in Emerald Bay raising a concern with the proposal, and that is Mr. Byron Ward, the adjoining property owner at 127 Emerald Bay. Mr. Ward does not live at live at 127 Emerald Bay and therefore may not have been in receipt of the various project notifications distributed by the District. As previously mentioned, Mr. Ward's concerns included the location of the proposed diesel generator, air quality, removal of a tree, the amount of grading taking place and the refueling of the fuel tank. It is staff's understanding that Mr. Ward and the District have come to an agreement on the issue of a tree and other landscaping issues. Regarding air quality, the proposal has been reviewed by the South Coast Air Quality Management District (AQMD) and a permit was issued to operate the diesel-fueled

generator (see Exhibit 3). Staff notes that 127 Emerald Bay is located adjacent to Pacific Coast Highway and Gate 7. Because of this location, the property is most likely subject to nuisance air quality issues much greater than the occasional operation of the proposed diesel fuel generator proposed.

Regarding the fueling and refueling of the diesel fuel storage tank, the Orange County Fire Authority has also reviewed and approved this proposal. The applicant informed staff that the OCFA procedures require the initial filling of any required refilling of fuel tank be made by a company licensed to fill diesel fuel tanks. The District originally was considering refueling the tank by hand with one-gallon containers. Also the fuel tank will be monitored daily under a procedure approved by Orange County Health Care Agency/Environmental Health Division (see Exhibit 4). Regarding grading, staff was informed by Subdivision and Grading Services Division that a grading permit would not be required for the excavation portion of the project.

CONCLUSION:

The project as proposed appears to be the best solution to help mitigate any potential future water quality issues associated with potential power outages. The location of the emergency generator was selected by the District to be the site closest to the area needing emergency electrical power and be in an area that is the least disruptive to the residents in the area for construction and maintenance. Minor changes to air quality may occur during generator testing (two to three times a year) and when outside electrical power is interrupted. But since the project is adjacent to the heavily traveled PCH and cumulative affects to air quality will be minimal. Staff supports the proposal by the Emerald Bay Services District and makes a recommendation as follows.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA02-0092 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief
CPSD/Site Planning Section

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APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

- 1. Applicant's Letter of Explanation, including letter sent to Emerald Bay residents regarding this proposal.
- 2. Letters from Bryon Ward to Emerald Bay dated July 17 and 19, 2002
- 3. AQMD Permit
- 4. HCA procedures
- 5. Site Photos and air photos
- 6. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.